BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:	
WESLEY ZHONG XIANG WONG Walnut, California Registered Nurse License No. 559573 Public Health Nurse Certificate No. 62500, Respondent.	Case No. 2007-139 OAH No. 2007110833
DECISION The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter. This Decision shall become effective on July 11, 2008 IT IS SO ORDERED June 13,2008	
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BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WESLEY ZHONG XIANG WONG Walnut, California

Registered Nurse License No. 559573 Public Health Nurse Certificate No. 62500,

Respondent.

Case No. 2007-139

OAH No. 2007110833

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California, on February 15, 2008.

Deputy Attorney General Rene Judkiewicz represented complainant Ruth Ann Terry, M.P.H., R.N., Executive Officer of the Board of Registered Nursing.

Respondent Wesley Wong was present and represented himself.

The record was left open for respondent to submit letters of reference, and for complainant to comment upon them. Respondent submitted two letters on February 21, 2008, which were marked as Exhibits B and C, and a third letter on February 25, 2008, which was marked as Exhibit D. The letters were received in evidence as hearsay. Complainant submitted written comment regarding the letters on March 3, 2008, which was marked for identification as Exhibit 7. The record was closed and the matter was submitted for decision on March 3, 2008.

FACTUAL FINDINGS

1. Respondent Wesley Zhong Xiang Wong has been licensed as a registered nurse since September 7, 1999. His registered nurse license, number 559573, will expire on September 30, 2009, unless it is renewed. Respondent has held a public health nurse certificate since August 9, 2000. His public health nurse certificate, number 62500, will also expire on September 30, 2009, unless it is renewed.

2. On October 26, 2005, respondent was convicted in Los Angeles County, on his plea of nolo contendere, of a misdemeanor violation of Penal Code section 647, subdivision (a) (disorderly conduct - lewd conduct in public place)¹. The offense of disorderly conduct by soliciting a lewd act in a public place is substantially related to the qualifications, functions or duties of a registered nurse.

Imposition of sentence was suspended and respondent was placed on summary probation for three years on conditions that included 45 days of community labor, six months (52 sessions) of sexual impulse counseling, and fines and fees of \$450. Respondent is not required to register as a sexual offender.

- 3. The offense took place in May 2005. Respondent propositioned a 17-year-old employee of his tropical fish store to pose nude for money. He was apprehended following a recorded pretext telephone call arranged by the police.
- 4. At the time of the offense, respondent had stopped working as a registered nurse in order to pursue his passion, which was to own and operate a tropical fish store. Respondent did not have a girlfriend, and he started associating with a crowd of young "lewd" men in a rough area of West Covina. He came up with the idea of photographing his teenage employee in the nude, and in so doing he gave no thought to her age or consideration to the effect his conduct would have on her. (He thought of her as older than 17, even though he knew she was not.) Respondent never had any intention of touching the girl, he just wanted to have pictures of her, in the vein of "Girls Gone Wild."
- 5. Respondent has been fully compliant with probation to date. Respondent completed 45 days of community service doing labor at a local park. In September 2006, he completed 52 sessions of counseling in a sexual offender program. Juan Maldonado, MFT, of Baldwin Park Counseling, ran the group program. In his completion report, Maldonado rated respondent as cooperative, as understanding that it was wrong to proposition a teenage girl, as accepting responsibility for his conduct, and as having a good understanding of the steps he needs to take to avoid situations like the one underlying the conviction. With respect to victim empathy, however, respondent was rated as not verbalizing much empathy for the victim.
- 6. Respondent attended nursing school at Pacific Union College in Angwin, California. From approximately 2000 to 2004, respondent worked in the emergency room at the Queen of the Valley Campus of the Citrus Valley Medical Center in West Covina.

Penal Code section 647 provides in relevant part: "Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: [¶] (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view."

Respondent sold his tropical fish business in October 2006 and returned to nursing at the Queen of the Valley in February 2007. Respondent says he disclosed his conviction to his employer.

7. Respondent is a competent emergency room nurse. This is confirmed by letters submitted from two charge nurses at Queen of the Valley who have known respondent for seven years. One of the nurses, Cheryl Freed, R.N., has been respondent's supervisor. In a letter dated February 15, 2008, Freed writes about respondent: "He is hard working and good at problem solving. He's also demonstrated good leadership and communication skills as well. He gets along with all of his colleagues and is well respected and loved. [¶] . . . I have no question about his character and I'm sure his other fellow workers will say the same."

In a letter dated February 22, 2008, Dorys Lujana, R.N., B.S.N., writes about respondent: "He's always been a dedicated nurse, hard working and respectful. He is very mindful of patient's [sic] needs and safety. I've never had any concerns to his character as a colleague or friend."

It is noted that neither of the writers of these letters express knowledge of respondent's criminal conviction, and for that reason, they are given little weight with respect to the writers comments regarding respondent's character. They are competent corroborating evidence of his abilities as a nurse, however, and for that purpose, the writers' comments are given greater weight.

8. Respondent is 30 years old. He is recently married, and he and his wife are expecting their first child in June. Since the conviction, respondent has resumed attending church, from which, in his words, he had "strayed." Respondent does not associate with the people he associated with at the time of the offense.

Respondent has told his parents and his wife about the conviction. (Respondent's father is a pastor.) Respondent has also told his friend from college, Michael Poon. In a letter submitted February 21, 2008, Poon attests to respondent's good character prior to the offense, and to his belief that respondent is trustworthy.

- 9. Respondent testified at hearing in a manner that is consistent with one who is telling the truth. In retrospect, he views his conviction as a good thing. The arrest and conviction have caused him to slow down and reflect on his life and on the mistakes he has made. The conviction is a constant reminder of his serious error in judgment.
- 10. There is no evidence that respondent has ever had a problem with alcohol or with controlled substances.
 - 11. Respondent has not committed any other criminal offenses.
 - 12. This is respondent's first disciplinary proceeding.

13. The board has incurred costs of \$9,445.75 in investigating and enforcing this matter through February 11, 2008. The costs are as follows:

Division of Investigation Costs

	FY 2005/2006	24.00 hrs @\$180.00	\$ 4,320.00
Attorney General Costs			
Paralegal	FY 2006-2007 FY 2007-2008	4.00 hrs @ \$101.00 0.25 hrs @ \$101.00	\$ 404.00 \$ 25.25
Legal	FY 2006-2007 FY 2007-2008	7.00 hrs @ \$158.00 22.75 hrs @ \$158.00	\$1,106.00 \$3,594.50
		Total:	\$9,449.75

Respondent does not challenge the reasonableness of the costs. The costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that the board may suspend or revoke the license of a licensee who has been convicted of any offense that is substantially related to the qualifications, functions, or duties of the licensed profession. Business and Professions Code section 2761, subdivision (f), provides that the board may take disciplinary action against a licensee who has been convicted of a felony or of any offense that is substantially related to the qualifications, functions, or duties of a registered nurse. The record of the conviction is deemed to be conclusive evidence of the conviction. (*Ibid.*) Pursuant to California Code of Regulations, title 16, section 1444, a conviction is considered to be substantially related to the qualifications, functions, or duties of a registered nurse if it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety or welfare.

As set forth in Factual Finding 2, respondent has been convicted of a misdemeanor offense that is substantially related to the qualifications, functions, or duties of a registered nurse. Cause exists to suspend or revoke respondent's registered nurse license and public health nurse certificate under Business and Professions Code sections 490 and 2761, subdivision (f).

2. Under Business and Professions Code section 125.3, the board may request the administrative law judge to direct a licentiate found to have violated the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. As set

forth in Factual Finding 13, the reasonable costs of investigation and enforcement of this matter are \$9,449.75.

3. All factual matters and all relevant criteria of rehabilitation have been considered. Respondent committed the offense less than three years ago and he remains on probation until October 2008. The offense showed a serious lack of judgment and maturity for one who was 27 years old. Respondent breached the position of trust he held as employer of the 17 year-old-victim, and he failed to consider the consequences his actions would have on her. For these reasons, the board has reason to be concerned about respondent's judgment when working as a nurse with vulnerable patients.

It does not appear, however, that respondent poses any real threat to the safety of nursing patients. This is respondent's only criminal offense, and it occurred outside of the nursing arena. Respondent has taken many important steps towards rehabilitation since the conviction: he sold the tropical fish business; he changed his social group; he got married and is becoming a father; he returned to his church; and he returned to his profession. Through counseling, respondent has come to understand the wrongfulness of his conduct, to accept responsibility for his actions, and to learn how to avoid such situations in the future. Because of his maturity and growth, it does not appear likely that respondent will reoffend. The evidence demonstrates that respondent is a competent nurse and one who is currently practicing with safety to the public. The public will be adequately protected by the following order, which allows respondent to retain his license on a probationary basis for five years on standard terms and conditions of probation.

ORDER

Registered Nurse License No. 559573 and Public Health Nurse Certificate No. 62500 issued to respondent Wesley Zhong Wong are revoked. However, the revocation is stayed and respondent is placed on probation for five years on the following conditions. Each condition of probation is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. Obey All Laws - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be

deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. <u>Comply With the Board's Probation Program</u> - Respondent shall fully comply with the conditions of the Probation Program established by the board and cooperate with representatives of the board in its monitoring and investigation of respondent's compliance with the board's Probation Program. Respondent shall inform the board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

- 3. Report in Person Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the board or its designated representatives.
- 4. Residency, Practice, or Licensure Outside of State Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period.

 Respondent's probation is tolled, if and when he resides outside of California. Respondent must provide written notice to the board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the board if he applies for or obtains a new nursing license during the term of probation.

5. <u>Submit Written Reports</u> - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

6. <u>Function as a Registered Nurse</u> - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the board.

For purposes of compliance with this condition, "engage in the practice of registered nursing" may include, when approved by the board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the board.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

7. Employment Approval and Reporting Requirements - Respondent shall obtain prior approval from the board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the board all performance evaluations and other employment related reports as a registered nurse upon request of the board.

Respondent shall provide a copy of this decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. <u>Supervision</u> - Respondent shall obtain prior approval from the board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the board, periodic, on-site visits to patients' homes visited by respondent with or without respondent present.
- 9. <u>Employment Limitations</u> Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other

protections for home visits have been approved by the board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a board-approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the board may request documentation to determine whether there should be restrictions on the hours of work.

10. <u>Complete a Nursing Course</u> - Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the board before enrolling in the course(s). Respondent shall submit to the board the original transcripts or certificates of completion for the above required course(s). The board shall return the original documents to respondent after photocopying them for its records.

11. <u>Cost Recovery</u> - Respondent shall pay to the board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$9,449.75. Respondent shall be permitted to pay these costs in a payment plan approved by the board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this

condition. During the one-year extension, all original conditions of probation will apply.

- 12. <u>Violation of Probation</u> If a respondent violates the conditions of his probation, the board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license.

 If, during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the board.
- 13. <u>License Surrender</u> During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the board. The board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will not longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the board. A registered nurse whose license has been surrendered may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for license surrendered for a mental or physical illness.

DATED:	March	5,	2008	

MELISSA G. CROWELL Administrative Law Judge

Office of Administrative Hearings

	1	
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2	II	
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8	BEFORE T	
9	BOARD OF REGISTED DEPARTMENT OF CONS	SUMER AFFAIRS
10	STATE OF CALI	IFORNIA
11	In the Matter of the Accusation Against:	Case No. 2007 - 139
12	WESLEY ZHONG XIANG WONG	
13	638 Pinecrest Lane Walnut, CA 91789	ACCUSATION
14	Registered Nurse License No. 559573 Public Health Nurse Certificate No. 62500	
15		
16	Respondent.	
17		
18	Complainant alleges:	
19	PARTIES	<u>S</u>
20	1. Ruth Ann Terry, M.P.H., R.N.	(Complainant) brings this Accusation
21	solely in her official capacity as the Executive Officer	r of the Board of Registered Nursing,
22	Department of Consumer Affairs (Board).	
23	2. On or about September 7, 1999	, the Board of Registered Nursing issued
24	Register Nurse License No. 559573 to Wesley Zhong	Xiang Wong (Respondent). The
25	Registered Nurse License was in full force and effect	at all times relevant to the charges brought
26	herein and will expire on September 30, 2007, unless	renewed.
27	3. On or about August 9, 2000, the	e Board issued Public Health Nurse
28	Certificate No. 62500 to Respondent. The Public Heal	lth Nurse Certificate was in full force and

effect at all times relevant to the charges brought herein and will expire on September 30, 2007, unless renewed.

JURISDICTION

- 4. This Accusation is brought before the Board, under the authority of the following laws. All Section references are to the Business and Professions Code unless otherwise indicated.
- 5. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 6. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
 - 7. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, ...

. . . .

- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."
 - 8. Section 490 states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a

conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

9. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- "(a) Assaultive or abusive conduct"
- 10. Section 118, subdivision (b), provides that the suspension / expiration / surrender / cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
- 11. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

- 12. Respondent is subject to disciplinary action under Sections 490 and 2761, subdivision (f), as defined in California Code of Regulations, title 16, section 1444, in that on or about October 26, 2005, Respondent was convicted of a crime for actions which represent his present or potential unfitness as a registered nurse to practice in a manner consistent with the public health, safety, or welfare, as follows:
- a. On or about October 26, 2005, in a criminal proceeding entitled *The People of the State of California v. Wesley ZX Wong* in Los Angeles County Superior Court,

Citrus District, West Covina, Case No. 5JM04998, Respondent was convicted on a plea of nolo contendere of violating Penal Code section 647(a) Disorderly Conduct (soliciting or committing a lewd act), a misdemeanor.

b. The circumstances of the conviction are that on or about May 25, 2005, Los Angeles County Sheriff's Department officers initiated a sting operation based upon a complaint involving a minor female, age 17. Respondent is the owner of a tropical fish store who hired a minor female with a listed age of 17 on her employment application. On the second day of the minor's employ, Respondent solicited the minor to pose for nude photographs. Subsequently, with detectives taping and listening to a telephone conversation between Respondent and the minor, Respondent solicited the minor to perform nude photographs for money. Respondent was arrested.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

13. Respondent is subject to disciplinary action under Section 2761, subdivision (a), in that on or about May 25, 2005, and on or about October 26, 2005, Respondent committed acts of unprofessional conduct, as more fully described above in paragraph 12.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Register Nurse License No. 559573, issued to Wesley Zhong Xiang Wong;
- 2. Revoking or suspending Public Health Nurse Certificate No. 62500, issued to Wesley Zhong Xiang Wong;
- 3. Ordering Wesley Zhong Xiang Wong to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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1		4.	Taking suc	h other and further action as deemed necessary and proper.
2				and proper.
3	DATED:	11/5	0106	
4			23./	_
5				RUTH ANN TERRY, M.P.H., R.N. Executive Officer
6				Executive Officer Board of Registered Nursing
7				Board of Registered Nursing Department of Consumer Affairs State of California
8	LA2006601094			Complainant
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